

Union of India ..Appellants
versus
Namdev Tukaram ..Respondent

CORAM: D.G.DESHPANDE, J.
DATED: 4TH MAY, 2005

1. Heard learned counsel for the parties.
2. This Appeal is filed by the Union of India - Appellants against the order of the RACT, Mumbai dated 31.7.1992.
3. Mr. Samant raised only two contentions. Firstly, according to him the RR issued by the Railway was "said to contain". The second contention was that the Tribunal awarded interest at the rate of 12% per annum and according to him it should be 9% per

annum in view of the Judgment of this Court reported in **2005(1) Mh.L.J. 165 Maharashtra State Electricity Board vs. Union of India**. It was a claim against the Railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed same judgment earlier, therefore the rate of interest is required to be reduced to 9% per annum. Therefore, he contended that firstly the appeal should be allowed so far as claim on merits is concerned, or alternatively interest rate should be reduced.

4. So far as contention of Mr. Samant of RR with the endorsement "said to contain", the same is required to be rejected.

5. A consignment of 381 packets of onions was booked for carriage ex Manmad to Naini under Invoice No. 12, RR No. 113407 dated 4.1.1984. The consignment was delivered on 21.1.1984. The Appellants handled the consignment negligently and brought the goods to the destination abnormally, unjustifiably and unexcusably late in fully, rotten, damaged, deteriorated and germinated stage. The appellants denied the contentions of the respondents and issued damage certificate. The respondents had sustained damages due to

negligent acts of the railways and inspite of repeated requests the railways have not disclosed full particulars of transit of the suit consignment and as the claim was not settled Application / suit came to be filed before the RACT Mumbai. The Tribunal framed as many as 14 issues but the issue regarding RR "said to contain" was not at all framed. The Tribunal found that there was total negligence of the railway. Therefore, in the circumstances the defence of "said to contain" is not available to the appellants.

6. So far as interest part is concerned, contention of Mr. Samant is required to be accepted in view of the judgment of this court, as stated above.

7. In the result, I pass the following order:

ORDER

. The appeal is partly allowed.

. The principal amount awarded will carry interest at the rate of 9% per annum from the date of application till realisation or till date of payment or deposit with proportionate

costs.

. Amount that is found in excess after the aforesaid calculations shall be returned to the appellants. Respondents will be permitted to withdraw the amount as per the calculations.

. No order as to costs.

. Appeal disposed of along with Civil Application.

4.5.2005

(D.G. DESHPANDE, J.)